

REMARKS

By this amendment, the independent claims of this application have been modified to make it further evident that relevant components are located within an intervertebral disc space prior to cement injection. Although Applicant contends the claims previously distinguished over the cited prior art, this should clarify the Applicant's arguments in this regard.

Claims 1 and 20 were rejected under 35 U.S.C. §102(e) over Johnson et al., U.S. Patent No. 6,595,998. This patent teaches a plurality of stacked wafers to treat vertebral compression fractures (see column 10, line 38 and column 19, line 27), tibial plateau compression fractures (column 23, line 48), and to perform interbody fusions (column 24, line 18). However, the bone filler, to the extent that it functions as a cement, is contained within the vertebral body in a spinal application. Figure 28, for example, shows bone filler 204, flowing around the wafers. Applicant can find no evidence that the component is situated within an intervertebral disc space in spaced-apart relation to an endplate.

Claim 8 stands rejected under 35 U.S.C. §103(a) over Johnson in view of Gould (2004/0067876). Apart from the fact that there is no evidence from the prior art to combine these references, given that the filler material of Johnson et al. flows around stacked wafers within a vertebral body, the addition of Gould et al. or any other reference in this regard defeats *prima facie* obviousness. The same holds true of claim 9.

Claims 12, 17-19 and 29-33 stand rejected under 35 U.S.C. §103(a) over Johnson et al. in view of Carbone ('362). Again, given that the filler material of Johnson flows around stacked wafers within a vertebral body, it would not be obvious to utilize tools as advanced by the Examiner, since such tools could not place cement in the area claimed by Applicant.

Based upon the foregoing amendments and comments, Applicant believes that all claims are in condition for allowance. To expedite prosecution, questions regarding this application may be directed to the undersigned by telephone, facsimile or electronic mail.

Respectfully submitted,

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